Supreme Court, U.S.
FILED
MAY 16 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1730

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

AWILDA APONTE ROQUE,
SECRETARY OF THE DEPARTMENT
OF EDUCATION OF THE
COMMONWEALTH OF PUERTO RICO

Petitioner,

v.

IPCIA M. KERCADO-MELENDEZ

Respondent.

BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER BY THE STATES OF KANSAS, NEW HAMPSHIRE, CONNECTICUT AND THE COMMONWEALTH OF PENNSYLVANIA

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INTEREST OF THE AMICI CURIAE

The states appearing as *amici curiae*, through their various state executive agencies, are responsible for enforcing the various civil statutes enacted by their respective legislatures for securing the integrity of the state's civil service and public employment. This responsibility is an important one from the standpoint

of protecting the health and welfare of the citizens of the several states.

While this case concerns the enforceability of the Commonwealth of Puerto Rico's statute for the discipline of tenured teachers for just cause, the constitutional principles at stake are of great importance to the proper balance between the states and the federal judiciary. For if the Court of Appeals for the First Circuit's decision is left to stand, it would significantly eviscerate the states' statutory procedure for the discipline for cause of *all* public employees and signal a significant transfer of public service personnel decision from the states' agencies to the federal courts. This result is offensive to the "proper respect for state functions" contemplated by the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971), as extended to the state administrative context, and hostile to "the belief that the national government will fare best if the states and their institutions are left free to perform their separate functions in their separate ways." *Id.*, 401 U.S. at 44.

The principles of federalism and comity that this Court has found to be "central" to our form of government have been misapplied by the Court below in a manner inimical to the states' interest in the enforcement of their laws, and thus call for the Court's granting of a writ of certiorari to the Court of Appeals for the First Circuit.

REASONS FOR GRANTING THE WRIT

In *Younger v. Harris*, 401 U.S. 37 (1971), the Court held that, absent special circumstances, reasons of federalism and comity required federal court to ab-

stain from enjoining a pending state criminal prosecution. Subsequently, the Court has expanded the scope of *Younger* to include state civil and administrative proceeding initiated to vindicate an important state interest and which afford the federal plaintiff an opportunity to hear her constitutional claims. *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 106 S.Ct. 2718 (1986); *See Younger v. Harris*, 401 U.S. 37 (1971); *Gibson v. Berryhill*, 411 U.S. 564 (1973); *Huffman v. Pursue*, 420 U.S. 592 (1975); *Juidice v. Vail*, 430 U.S. 327 (1977); *Trainor v. Hernández*, 431 U.S. 434 (1977); *Moore v. Sims*, 442 U.S. 413 (1979); *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423 (1982); *Pennzoil v. Texaco*, ___ U.S. ___, 107 S.Ct. 1519 (1987).

As petitioners point out, however, a majority of the First Circuit panel mistakenly declined to abstain from interfering with the Commonwealth's disciplinary proceeding initiated pursuant to the Teachers Misconduct Act, P.R. Laws Ann. tit. 18, §§274-274o (1974). By focusing on marginal concerns, the First Circuit permits the defeat of the overriding values of federalism, comity and equity that control whenever the state initiates a proceeding to vindicate an important state interest embodied in state law. If allowed to stand, the First Circuit decision would enable a federal court to transmute itself into a super-personnel board passing judgment on personnel decisions concerning an area traditionally left to the states to perform, such as that of enforcing state statutes concerning the integrity of public service personnel.

In particular, the First Circuit decision errs in the following manner:

I. The First Circuit decision misapplied Supreme Court precedent went it held that abstention is inappropriate merely because the affected teacher alleges that her dismissal was motivated by an unconstitutional purpose

In its decision, the Court of Appeals found that abstention is inappropriate whenever a teacher, instead of attacking the constitutionality of the state proceeding or their underlying statutory predicate, simply "alleges that her dismissal was motivated by an unconstitutional motive." Pet. App. 12a.

The distinction established by Judge Bownes, who penned the majority opinion, for triggering application of *Younger* abstention misconstrues both this Court's precedent and the state interest involved. For this Court has never intimated that the state interest involved in the enforcement of state law diminishes just because the motivation of the state executive is in question. On the contrary, federal intervention is just as intrusive whenever a federal action challenges either the constitutionality of the underlying statute or the constitutionality of the state actor's motive, for in both circumstances the federal action seeks to nullify the enforcement of state law by the state in its sovereign capacity.

The artificial distinction drawn by the majority for applying *Younger* abstention is disingenuous. It would disabled attempts by the state to enforce state law merely by allegations of improper motive, even where there is no indication that the state's administrative-judicial review mechanism cannot fairly adjudicate the employee's claim of unconstitutional motive. While paying lip service to the values of federalism, in essence, the First Circuit's decision reduces abstention

to a rule of pleading. This result is irreconciliable with *Younger* and its progeny.

II. The First Circuit misread *Dayton* when it found the Commonwealth's proceeding to be remedial, rather than coercive, simply because the affected teacher must take "affirmative steps" to invoke the integrated administrative-judicial review mechanism

The First Circuit's decision acknowledges the extension of *Younger* abstention to the state administrative context effectuated by *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, ___ U.S. ___, 106 S.Ct. 2718 (1986). It concluded, nonetheless, that *Dayton* was inapplicable to the state proceeding in question because said proceeding was remedial, rather than coercive. *Dayton*, 106 S.Ct. at 2723, n. 2.

This Court has never spelled out the distinction between a remedial and a coercive state proceeding. This distinction, however, cannot hinge, as Judge Bownes indicates, on whether the affected employee must take affirmative steps to contest the disciplinary charges. For what makes a state proceeding coercive is not whether the affected employee must take affirmative steps to contest the disciplinary charges, but whether the affected employee is unwillingly exposed in a proceeding initiated by the state to the loss of a property or liberty interest for violation of state law. The state disciplinary proceeding is not any less coercive because the charged employee may admit, acquiesce in or otherwise not contest the charges. In such non-contested cases, the affected employee simply acknowledges the charges and accepts the disciplinary sanction against her imposed by the state.

Conversely, should the employee wish to contest the disciplinary charges against her, the "affirmative steps" requirement does not detract from the coercive nature of the proceeding. For in contested cases, the charged employee becomes engaged in an adversarial proceeding in which the state, via the head of the agency, assumes a prosecutorial role with respect to the charged employee. The decision to contest the charges, thus, signals the intent of the affected employee to defend himself and to invoke a full panoply of constitutionally sound administrative-judicial mechanisms to review the merits of the charges and the constitutional defenses, including those of unconstitutional motive, available to the charged employee. It is clear, therefore, that the criteria for determining whether a state proceeding is coercive or remedial cannot merely turn on the availability of an opportunity to contest the underlying charges; it must be grounded on the nature of the proceeding itself, that is, on whether it is a state initiated proceeding of a potentially adversarial nature in which the charged employee is exposed to a disciplinary sanction, including removal, imposed by the state.

III. The First Circuit erred when it refused to apply the exhaustion requirement of *Huffman* to the state administrative proceedings

The First Circuit similarly erred when it refused to apply the exhaustion requirement of *Huffman v. Pursue*, 420 U.S. 592 (1975) to the state proceeding involved. In *Huffman*, the Court held that a "necessary concomittant of *Younger*", is the need to exhaust state appellate remedies before seeking federal injunctive relief. The First Circuit, however, erroneously held that *Patsy v. Florida Board of Regents*,

457 U.S. 592 (1975), dispensed the plaintiffs from compliance with *Huffman*.

As Judge Breyer's dissenting opinion indicates, the panel majority opinion in this respect runs contrary to relevant Supreme Court authority. First of all, *Huffman* indicated that the general no-exhaustion requirement of Section 1983 actions has "nothing to do" with situations in which the state initiated a proceeding to vindicate an important state interest. 420 U.S. at 607-609, n. 21. Furthermore, Justice White's concurring opinion in *Patsy* itself noted that the Court's holding there "is also fully consistent with (the Court's) decisions that a defendant in a civil or administrative enforcement proceeding may not enjoin and sidetrack that proceeding by resorting to a §1983 action in federal court." *Patsy*, 457 U.S. at 518-519 (White, J., concurring). It seems evident, therefore, that *Patsy* does not encompass situations as this one in which the state has initiated a proceeding to vindicate an important state interest and the state proceeding provides for an integrated administrative-judicial review mechanism to contest the validity of the underlying charges and which affords an opportunity to present all constitutional claims. *Patsy* did not concern a state procedure initiated to vindicate values embodied by state law. There, an applicant for employment was allegedly rejected because of her sex and race. The state was not acting in a sovereign capacity as an enforcer of state law. Therefore, none of the values of federalism and comity embodied in the abstention doctrine were at stake. *Patsy* is inapplicable.

As petitioners describe, the First Circuit decision below has focused on secondary considerations to de-

feat the central values of federalism, comity and equity that control whenever a state initiates a proceeding to vindicate important state interest embodied in state law. As a result, the First Circuit decision threatens to deprive the states of functions best left for them to perform, particularly functions associated with the enforcement of state law and the discipline of public employees. Thus, the First Circuit's decision is contrary to Supreme Court authority and is hostile to the proper respect for state functions contemplated by Our Federalism. For these reasons, review by the Court is appropriate.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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